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Reference ID	Created	Released	Classification	Origin
<a href="#">08BOGOTA4083</a>	2008-11-12 16:05	2011-08-30 01:44	<a href="#">CONFIDENTIAL</a>	Embassy Bogota

Appears in these articles:

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VZCZCXYZ0023  
PP RUEHWEB

DE RUEHBO #4083/01 3171605  
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FM AMEMBASSY BOGOTA  
TO RUEHC/SECSTATE WASHDC PRIORITY 5535  
INFO RUEHBR/AMEMBASSY BRASILIA PRIORITY 8485  
RUEHCV/AMEMBASSY CARACAS PRIORITY 1307  
RUEHPE/AMEMBASSY LIMA PRIORITY 6724  
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C O N F I D E N T I A L BOGOTA 004083

SIPDIS

E.O. 12958: DECL: 11/12/2018  
TAGS: [PGOV](#) [PREL](#) [MARR](#) [PREF](#) [PTER](#) [MASS](#) [CO](#)  
SUBJECT: COLOMBIAN COUNTERPROPOSAL TO U.S. DEFENSE

COOPERATION AGREEMENT

Classified By: Ambassador William R. Brownfield  
Reasons 1.4 (b and d)

¶1. (U) This is an Action Request. See paragraph 5.

SUMMARY

¶2. (C) On October 23 the Ministry of Foreign Affairs of the Government of Colombia (GOC) delivered its official response to Embassy Bogota on the Defense Cooperation Agreement text that we proposed on August 13. The GOC counterproposal is generally consistent with prior GOC statements that any agreement should: 1) avoid the use of the word "base;" 2) place the agreement under the umbrella of existing bilateral and multilateral accords to avoid the need for Colombian congressional approval; and 3) provide U.S. security assurances to the GOC as a "quid pro quo" for access rights. Post has identified several problematic issues in the GOC counterproposal, together with possible solutions that would address our concerns while meeting GOC needs. Post requests that the Department consider sending a technical negotiating team to Bogota in the near future to begin formal negotiations. An official translation of the GOC's counterproposal is included in paragraph 6. End Summary.

DRAFT CONSISTENT WITH GOC COMMENTS

¶3. (C) The GOC's October 23 counterproposal is generally consistent with remarks made to the Ambassador and other senior Embassy officials by President Uribe, Defense Minister Santos, and Foreign Minister Bermudez. These senior GOC officials have said the proposed agreement should avoid the use of the word "base," should be linked to earlier bilateral and multilateral agreements to avoid the need for Colombian congressional approval, and should provide U.S. security assurances to the GOC as a "quid pro quo" for access rights. President Uribe has also said he would like to conclude an agreement before the end of the year.

EMBASSY COMMENTS TO GOC DRAFT

¶4. (C) Post believes it is important that in negotiating this agreement with the GOC, we seek language that addresses our concerns while being as responsive to the GOC's needs as possible. In this context, Post has identified the following issues with the GOC counterproposal--as well as possible solutions--that will need to be addressed:

**ISSUE ONE:** The GOC has included within the agreement's preamble references to numerous existing bilateral and multilateral agreements. The title has also been changed from "Defense Cooperation Agreement" to "Supplemental Agreement for Cooperation and Technical Assistance," in order to place it under the umbrella of existing bilateral accords. These edits are consistent with the GOC's goal of avoiding the need for Colombian congressional approval. The changes would also make it easier for the GOC to sell the agreement to the Colombian public and the region as simply an extension of our existing cooperation, rather than as a major escalation in U.S. engagement. **COMMENT:** Post believes that tying the agreement to existing bilateral and multilateral agreements does not impact U.S. interests and is important to the GOC's capacity to conclude an accord. If we can get the access and authorities we need by changing the title, we recommend changing the title.

**ISSUE TWO:** The GOC-proposed Article III states that the parties "agree to" undertake a number of measures to increase cooperation and technical military cooperation in order to "confront common threats to peace and stability." **COMMENT:** To limit a possible open-ended U.S. security commitment under this provision, Post suggests that we insert a less binding verb such as "agree to study" or "agree to consider" in place of "agree to."

**ISSUE THREE:** The GOC draft of the second paragraph of

Article IV provides that the U.S. "guarantee rapid and direct access" to the GOC of "goods and services necessary to address "threats to its national security." COMMENT: To avoid U.S. material being used in a potential regional conflict, Post suggests that this language be amended to

require that both the U.S. and Colombia need to agree on what constitutes "threats to its national emergency," thus effectively granting us a veto over the use of any U.S. "goods or services" under this provision.

**ISSUE FOUR:** The GOC draft of the third paragraph of Article IV provides that within two years of signing the agreement, the U.S. shall install and make operational "comprehensive aerial defense systems" in order to provide necessary security on the "agreed facilities and others of strategic value for purposes," which systems shall transfer "free of charge" to the GOC at the conclusion of the agreement. This provision is clearly aimed at external threats, particularly Venezuela. COMMENT: Post believes the GOC does not appreciate the cost and scope entailed in building an integrated air defense system, which could cost billions of dollars and take years to develop. Post recognizes that the proposed GOC language is unacceptable, and suggests that we try to remove the provision from the agreement and deal with it in the context of other bilateral discussions. If the GOC insists on its inclusion, we propose a two-track approach in which the U.S. would "commit to assess the operational requirement for comprehensive air defense systems for use and operation by the GOC," coupled with language in which the U.S. would "commit to provide for the protection of USG aircraft and personnel" (but not installations) in the event of a threat to these assets. The latter provision should be drafted to allow for all possible responses to protect USG assets, including the withdrawal of such assets from Colombia if necessary. Finally, we should begin to consider quietly whether we would be prepared to provide some air defense equipment to Colombia should that be the price of a DCA.

**ISSUE FIVE:** The GOC has deleted the status of armed forces (SOFA) language that we proposed. Instead, Article VI of the GOC draft links privileges and immunities (P&I) to the 1974 agreement titled "Agreement Between the Government of the United States of America and the Government of the Republic of Colombia Concerning an Army Mission, a Naval Mission and an Air Force Mission of the United States of America Armed Forces in the Republic of Colombia" (commonly known as the "1974 Agreement"). This again reflects the GOC's desire to link to earlier agreements in an effort to avoid the need for a Colombian congressional vote. COMMENT: The wording of Article VI and the 1974 Agreement will need to be reviewed carefully by technical experts, but Post believes that the GOC approach represents an acceptable way forward. The provisions in the 1974 Agreement--which also links to an earlier 1962 bilateral accord--appear to provide technical and administrative P&I to USG personnel, and as such would meet the P&I needs provided for in our draft agreement.

**ISSUE SIX:** Post proposes insertion of a new clause in Article XVII wherein the parties would commit to sign a technical Memorandum of Understanding (MOU) within 60 days of signing the underlying agreement. The MOU would address more detailed operational issues, thereby facilitating rapid and seamless implementation of the underlying agreement.

**15. (C) Action Request.** Post requests that the Department consider sending a technical negotiating team to Bogota in the near future to begin formal negotiations.

**OFFICIAL TRANSLATION OF GOC TEXT**

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**16. (U)** An official translation of the GOC counterproposal follows, provided by U.S. Department of State, Office of Language Services, Translating Division:

The Ministry of Foreign Relations presents its compliments to the Embassy of the United States of America and refers to its note verbale No. 2349 of August 13, 2008, which includes a proposal for a defense cooperation agreement.

In this regard, the Government of Colombia attaches hereto its counterproposal entitled "Supplemental Agreement for Cooperation and Technical Assistance between the Governments of the Republic of Colombia and of the United States of America."

(Complimentary close)  
Bogota, D.C., October 21, 2008

Embassy of the United States of America, Bogota. LS No.  
10-2009-0340-B.

SUPPLEMENTAL AGREEMENT FOR COOPERATION AND TECHNICAL ASSISTANCE BETWEEN THE GOVERNMENTS OF THE REPUBLIC OF COLOMBIA AND OF THE UNITED STATES OF AMERICA

The Government of the Republic of Colombia ("Colombia") and the Government of the United States of America ("the United States"), hereinafter referred to collectively as "the Parties" and singularly as "the Party":

In the framework of the General Agreement for Economic, Technical, and Related Assistance between the Government of the United States and the Government of the Republic of Colombia, signed in 1962 ("the 1962 Agreement"); the Agreement between the Government of the Republic of Colombia and the Government of the United States of America concerning an Army Mission, a Naval Mission, and an Air Force Mission of the United States of America Armed Forces, signed in 1974; the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); the United Nations Convention against Transnational Organized Crime (2000); the conventions on the fight against terrorist activities signed within the framework of the United Nations and the Organization of American States, to wit: the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, adopted by the United Nations General Assembly on December 14, 1973; the International Convention against the Taking of Hostages, adopted by the UN General Assembly on December 17, 1979; the International Convention on the Suppression of Terrorist Bombings, adopted by the UN General Assembly on December 15, 1997; the International Convention for the Suppression of the Financing of Terrorism of December 9, 1999; the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance (1971); the Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of September 23, 1971, signed at Montreal on February 24, 1988; the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on September 14, 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on December 16, 1970; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on September 23, 1971; and the Inter-American Convention against Terrorism, adopted at Bridgetown, Barbados, on June 3, 2002, to which both States are party, and United Nations Security Council Resolution No. 1373 of 2001;

Observing that the Annex to the General Agreement for Economic, Technical, and Related Assistance between the Government of the United States of America and the Government of the Republic of Colombia, signed in 2004, establishes a bilateral narcotics control program, including a comprehensive program to counter drug trafficking, terrorist activities, and other threats to the national security of the Republic of Colombia;

Noting the Memorandum of Understanding for a Strategic Security Relationship to Promote Cooperation between the Governments of the Republic of Colombia and of the United States of America of March 14, 2007;

Noting the record of bilateral cooperation to counteract persistent threats to peace and stability, such as terrorism, the global drug problem, organized transnational crime, and the proliferation of small and light weapons;

Recognizing the importance of strengthening the interoperability of the Armed Forces of Colombia by increasing their capacity to cooperate with foreign and

multinational military forces in the areas of communications, technology, logistics, procedures, and military doctrine;

Noting the work carried out by the Colombia-United States Defense Bilateral Working Group and its Steering Committee over the past several years;

Recognizing the need to strengthen the strategic security relationship between the two States, foster closer bilateral defense and security cooperation, and address common threats to peace, stability, freedom, and democracy;

Affirming that this strategic relationship of security and technical cooperation is based upon full respect for the sovereignty of each Party and the purposes and principles of the United Nations Charter;

HAVE AGREED AS FOLLOWS:

#### Article I

##### Definitions

For purposes of this Agreement:

(a) "Civilian personnel" means civilian employees of or persons formally assigned to the United States Department of Defense who are in Colombia to carry out activities under this Agreement and civilian employees of other United States Government departments and agencies who are present in Colombia in direct support of a United States Department of Defense mission in connection with activities under this Agreement.

(b) "Military personnel" means members of the United States Armed Forces who are in Colombia to carry out activities under this Agreement.

(c) "United States personnel" means United States military and civilian personnel who are in Colombia to carry out activities under this Agreement.

(d) "United States contractors" means a natural person or legal entity that has entered into a contract with the United States Department of Defense to provide goods and services for activities carried out under this Agreement.

(e) "United States contractor employees" means individuals who are employed by a United States contractor for activities under this Agreement.

(f) "Aircraft riders" means representatives of the Republic of Colombia or third-party States who, once authorized by the Government of Colombia and by invitation from the Government of the United States of America, participate as observers in aerial missions in connection with this Agreement.

(g) "Agreed facilities" means those sites, facilities, structures, and locations to which the United States Government is authorized access and use by the Government of Colombia in connection with activities under this Agreement.

(h) "Executive Agents" means the Ministry of Defense for Colombia and the Department of Defense for the United States.

(i) "Dependents" means spouses, children, and relatives forming part of the household of United States personnel and who are present in the territory of Colombia in connection with activities under this Agreement.

#### Article II

##### Bilateral Defense Consultations

The Parties agree to continue bilateral defense consultations through the Colombia-United States Defense Bilateral Working Group (BWG) to further the strategic relationship between the

two States.

### Article III

#### Goal of Cooperation

The Parties, in accordance with their bilateral and multilateral agreements currently in force, and subject to the legal system of each, agree to increase cooperation and technical-military assistance with a view to increasing interoperability; improving joint procedures; strengthening logistical assistance; expanding the scope of training and instruction; scaling up exchanges of intelligence, equipment, experiences, and knowledge; conducting joint military exercises; and carrying out all necessary activities to comply with the provisions of the aforementioned agreements, in order to address common threats to peace and stability, within the framework of international law.

All technical military assistance and activities within Colombian territory shall be subject to authorization and oversight by the appropriate Colombian Government authorities, not to exceed the provisions established in bilateral and multilateral cooperation agreements and treaties signed by the Parties, or Colombian regulations.

Specifically, no provision of this Agreement shall modify the provisions set forth in the Maritime Interdiction Agreement or in the Agreement (between the Government of the United States of America and the Government of the Republic of Colombia) concerning the Program for the Suppression of Illicit Aerial Traffic in Narcotic Drugs and Psychotropic Substances (Air Bridge Denial).

The Parties shall comply with their obligations under this Agreement in a manner consistent with the principles of sovereign equality, territorial integrity, and non-intervention in the internal affairs of other States.

One Party shall not exercise in the territory of the other, any responsibility or task reserved exclusively for its own authorities in accordance with its domestic law.

### Article IV

#### Access to and Use of Agreed Facilities

For the purposes established in Article III hereof, the Government of Colombia, subject to its domestic law, agrees to grant the United States access to and use of its facilities at German Olano Moreno Air Base, Palanquero; the Alberto Pawells Rodrguez Air Base, Malambo; the Capitan Luis Fernando Gmez Nino Air Base, Apiay; and other official facilities as agreed upon by the Parties.

The Government of the United States shall guarantee the Government of Colombia rapid and direct access to any goods and services necessary to confront threats to its national security, by means of logistical and storage systems agreed upon by the Executive Agents.

Moreover, the Government of the United States agrees to install and make operational comprehensive aerial defense systems for use and operation by Colombian authorities, within a period of no more than two years from the date of signature of this Agreement, so as to provide the necessary security to the agreed facilities and others of strategic value for purposes of ensuring national security, and to transfer these systems to the Government of Colombia free of charge upon termination of this Agreement.

The access described in the first paragraph of this Article shall be granted to United States contractors, United States contractor employees, and official aircraft riders, ships, aircraft, and vehicles upon compliance with the security protocols established by the Executive Agents for such purpose.

### Article V

#### Respect for Domestic Law

United States personnel, their dependents, contractors, contractor employees, and aerial riders shall respect

Colombian law and shall abstain from any activity incompatible with such law and this Agreement.

#### Article VI

##### Privileges and Immunities

¶1. United States personnel present in Colombia by virtue of this Agreement shall be part of the diplomatic mission of the Government of the United States of America in Colombia and shall enjoy the privileges and immunities established in the (General) Agreement for Economic, Technical, and Related Assistance between the Government of the United States of America and the Government of the Republic of Colombia of 1962; and the Agreement between the Government of the Republic of Colombia and the Government of the United States of America concerning an Army Mission, a Naval Mission, and an Air Force Mission of the United States of America Armed Forces, signed in 1974, for personnel of equal rank.

¶2. The appropriate United States authorities shall give favorable consideration to any request to renounce immunity in cases considered to be of special importance by Colombian

authorities.

¶3. Colombian authorities agree to assist with immigration procedures to facilitate the entry into and exit from Colombia of United States personnel, their dependents, contractors, contract employees, and aircraft riders who enter and exit Colombia to carry out activities under this Agreement.

¶4. Pursuant to Article IV of the 1962 Agreement, any goods used under this Agreement by the Government of the United States or by United States contractors shall be exempted from the payment of property and use taxes and any other duty, including taxes, tariffs, customs duties, or similar charges associated with the import, export, purchase, use, or disposition of such goods.

¶5. Pursuant to Article IV of the 1962 Agreement, United States personnel, with the exception of Colombian citizens or other permanent residents of Colombia, shall be exempt from the payment of income and social security taxes under Colombian law; and from taxes on sales, property, use, or disposition of personal property, including automobiles for personal use. Such personnel and their family members shall receive the same treatment concerning the payment of customs duties, and those levied on the import or export of personal goods, including automobiles imported into Colombia for personal use, as that granted by the Government of Colombia to diplomatic personnel of the United States Embassy in Colombia.

¶6. The Government of Colombia shall accord the import regime it considers most expeditious to goods imported under this Agreement.

#### Article VII

##### Land Ownership and Use

¶1. The authorities of Colombia shall, without charging rental or similar costs, allow access to the agreed facilities in accordance with the provisions of Article IV hereof, as well as to easements and rights of way owned by Colombia that are necessary to facilitate the activities under this Agreement, including agreed construction. The United States shall cover all necessary operations and maintenance expenses associated with the use of agreed facilities.

¶2. Colombia shall retain the right of ownership of, and title to, agreed facilities, including buildings, non-relocatable structures, and assemblies connected to the soil. Permanent buildings, non-relocatable structures, and assemblies constructed by the United States shall be for the use of the United States unless otherwise agreed by the Executive Agents. The Parties shall have access, pursuant to the security protocols established by the Executive Agents, to the agreed facilities, and to the permanent buildings, non-relocatable structures, and assemblies constructed by the United States.

¶3. At the termination of use of any agreed facility or portion thereof, including those constructed, improved, modified, or repaired in connection with this Agreement, the United States shall, after due consultation between the

Parties, transfer such facilities to Colombia in "as is" condition. The United States shall incur no expense for such return. The United States shall not be obliged to remove any facilities, buildings, or improvements thereto that have been constructed with its own funds, unless such an obligation was stipulated by Colombia at the time of construction.

#### Article VIII

##### Construction

New construction, improvements, or modifications to the agreed facilities under this Agreement shall require the authorization of the Executive Agent of Colombia.

The Executive Agent of the Government of Colombia shall be responsible for facilitating the permits and/or licenses required by the appropriate authorities of the Republic of Colombia. The costs of local licenses, permits, or taxes associated with the facilities shall be paid pursuant to agreement reached among the Executive Agents for each case.

#### Article IX

##### Utilities

The United States and United States contractors may use water, electricity, and other public utilities and services for construction, improvement, and use of the agreed

facilities in connection with activities under this Agreement. The United States and United States contractors shall pay the legally established rates for utilities requested and received.

#### Article X

##### Administrative Facilitation

The United States, United States personnel, United States contractors, and United States contractor employees, acting in connection with activities directly related to this Agreement, shall receive from Colombian authorities all necessary cooperation with regard to the prompt processing of all administrative procedures.

#### Article XI

##### Uniforms and Weapons

The use of uniforms for United States military personnel is governed by Article 8 of the Agreement between the Government of the Republic of Colombia and the Government of the United States of America concerning an Army Mission, a Naval Mission, and an Air Force Mission of the United States of America Armed Forces, signed in 1974.

In the facilities agreed upon by the Parties, United States military personnel are authorized to wear uniforms and to carry United States government weapons while on duty, in accordance with Colombian regulations.

#### Article XII

##### Security

Colombian authorities are responsible for the oversight and physical security of the agreed facilities. The authorities of Colombia and the United States shall consult each other and take such steps as may be necessary to ensure the security of United States personnel, dependents, United States contractors, United States contractor employees, and United States property.

#### Article XIII

##### Insurance Policies and Claims

Without prejudice to any legal action or the obligation of the Government of the United States to secure insurance policies that guarantee compensation for any damages that may be caused by United States personnel, claims filed for damages, injury, or loss caused by such personnel may be filed, evaluated, and, where appropriate, resolved in favor of the complainant by the Government of the United States, in accordance with its laws and regulations, and with international law. With respect to the foregoing, the Government of Colombia does not waive any rights it may have under international law to file claims against the Government of the United States through diplomatic channels.

#### Article XIV

## **Environment, Health, and Safety**

The Parties agree to implement this Agreement in a manner consistent with the protection of the natural environment and human health. The United States confirms its commitment to respect relevant Colombian environmental and health laws, regulations, and standards in the implementation of this Agreement.

## **Article XV**

### **Facilitation of Aircraft Riders**

Upon securing authorization from Colombian authorities, the United States shall facilitate the stay of third-country aircraft riders at the agreed facilities.

## **Article XVI**

### **Resolution of Disagreements**

Any disagreement that may arise from the interpretation of this Agreement, or its implementing arrangements, shall be settled through consultation between the Parties, including, as necessary, through diplomatic channels, and shall not be referred to any national or international arbitration court or tribunal, or similar body, nor to any third party for settlement. No provision of this Agreement may be interpreted in a manner that contradicts Colombian law.

## **Article XVII**

### **Implementation and Amendment**

¶1. The Executive Agents shall enter into the implementing arrangements as necessary to carry out the provisions of this Agreement.

¶2. In a spirit of close cooperation, the Executive Agents shall consult each other regularly with a view to ensuring satisfactory implementation of and compliance with the provisions of this Agreement. When reviewing activities under this Agreement, the Parties shall evaluate such activities in terms of, *inter alia*, shared benefits and responsibilities.

¶3. Either Party may request consultations with a view to amending the present Agreement. Any amendment to the present Agreement shall be made in writing.

¶4. This Agreement shall enter into force upon signature.

¶5. This Agreement shall remain in force for a period of ten years. In order to extend this Agreement, the Parties shall determine the conditions for its extension one year prior to its expiration date.

¶6. Either of the Parties may terminate this Agreement by means of written notification through diplomatic channels with one year of advance notice.

IN WITNESS WHEREOF, the undersigned have signed this Agreement in the English and Spanish languages, both texts being equally authentic.

DONE at , on this day of , 20 .

End of official translation.

BROWNFIELD